

## **Navigating the maize: What the new National Policy Statement for Highly Productive Land 2022 means for you**

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On 18 September, the Ministry for the Environment announced a new National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) which seeks to protect highly productive land (**HPL**) for use in land based primary production, now and for future generations. The NPS-HPL will come into force on 17 October 2022 and all local authorities will be required to give effect to it.

### ***What is Highly Productive Land?***

HPL is land that meets the following criteria:<sup>1</sup>

1. Zoned General Rural or Rural Production under the relevant District Plan; and
2. Has a Land Use Capability Class (**LUC**) of 1, 2 or 3; and
3. Forms a large and geographically cohesive area.

The LUC system underpins the classification process. There are eight total classes which are ranked from most to least productive according to the land's long-term ability to sustain one or more productive uses. The most productive land (with the fewest resource constraints) is Class 1, and the least productive land (with the most resource constraints) is Class 8.

However, any land that is identified for future development (in a future development strategy or strategic planning document) or is subject to a council initiated or approved plan change will not be treated as HPL. So in essence, if your land has already been identified for development it is safe.

Under the NPS Regional Council's are required to map land that meets the HPL criteria. Some mapping has occurred already and can be viewed either on the relevant regional council's website or at Manaaki Whenua Landcare Research: [Manaaki Whenua Landcare Research Mapping](#).

However, it is important to note that the NPS-HPL provisions apply from October 17th regardless of this mapping being completed, through a suite of transitional provisions.

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<sup>1</sup> Clause 3.4

### *How does the NPS-HPL impact me?*

If your land qualifies as HPL then it will be more difficult to change that land's usage to urban zoning, or general subdivision for rural lifestyle or urban uses. Other land uses are also heavily restricted where that particular use or development will reduce the long-term productive capacity of the HPL.

#### *Subdivision*

The NPS-HPL generally seeks to avoid subdivision of HPL to a form of urban or rural lifestyle zone.<sup>2</sup> This general 'avoid' policy is subject to ensuring that the overall productive capacity of the land over the long term will be sustained. This reflects a growing concern (raised in the [Our Land 2018 Report](#)) that fragmentation of rural land into smaller parcels creates fewer opportunities to provide for the landowners social, economic, and cultural wellbeing.

Territorial authorities are also required to ensure that any subdivision that is approved avoids (where possible) or otherwise mitigates any actual or potential reverse sensitivity effects on surrounding properties that are being utilised for agriculture, horticulture, pastoral or other land-based activity that is reliant on the soil of the land. This will have the effect of reducing proposals for residential subdivision or rural lifestyle blocks in close proximity to working farms which can often lead to complaints about how those properties are lawfully being used.

#### *Use and development*

Territorial authorities must also avoid the inappropriate use or development of HPL for activities that do not qualify as 'land based primary production'. These alternative uses are likely to include the likes of industrial activities, commercial recreation etc. Uses or development of land for these other activities will generally be inappropriate unless one or more of the 14 exceptions apply, including where the use or development:

- provides for supporting activities on the land, being those activities reasonably necessary to support land-based primary production.
- provides for the retirement of land from land-based primary production to improve water quality.
- is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity.

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<sup>2</sup> Clause 3.7 and 3.8.

- is a small-scale or temporary land-use activity that has no impact on the land's productive capacity.
- relates to infrastructure, defence, or mineral extraction with significant public benefit.

Like subdivision activities, territorial authorities must take measures to ensure that any use or development of HPL avoids, if possible, or otherwise mitigates, any actual or potential cumulative loss of the availability and productive capacity of HPL in the district and any actual or potential reverse sensitivity effects on surrounding land based primary production activities.

*A further exemption for long term constraints on the land*

If an application for subdivision, use or development is not otherwise provided for in the NPS-HPL, it may still be able to proceed where:

- there are permanent or long-term constraints on the land such that it is not able to be economically viable for at least 30 years; and
- the subdivision, use or development avoids significant loss of productive capacity and fragmentation of large areas of HPL and avoids or mitigates any potential reverse sensitivity effects on surrounding primary production; and
- the environmental, social, cultural, and economic benefits of the subdivision, use, or development outweigh the long-term costs associated with the loss of HPL for land based primary production.

The threshold for this exemption is high and likely quite difficult to overcome.

*Existing uses*

Existing uses of HPL provided by the consent, designation, or otherwise by the Resource Management Act 1991 are provided for by the NPS-HPL and are permitted to continue.

Territorial authorities will be required to have provisions in District Plans that enable the maintenance, operation, or upgrade of any existing activities while also ensuring that any loss of HPL from such activities is minimised.

The NPS is not all doom and gloom. Considerable protection will be afforded through future regional and district plans which provided for the continuation of existing primary production land uses. That will be particularly useful for those activities that give rise to potential effects beyond a site boundary, including frost fans or spray drift in horticulture or viticulture activities.

In conjunction with an increased focus on spatial planning and future development strategies under the proposed Natural and Building Environment Act and Spatial Planning Act we are likely to see a greater focus on locating urban development outside of areas of HPL and existing primary production land uses.

***Conclusion***

The NPS-HPL is certain to impact landowners seeking to diversify existing properties beyond land-based productive uses. This includes particularly onerous restrictions on subdividing land for residential purposes.

If you want to know more about how the NPS-HPL affects your land and if it will have an impact on the activities that you wish to undertake, feel free to contact our Resource Management Team.

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